

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA	§	
and STATE OF TEXAS,	§	
	§	
Plaintiffs,	§	Civil Action No.
	§	
v.	§	Judge
	§	
CHEVRON U.S.A. INC., CHEVRON	§	Mag.
ENVIRONMENTAL MANAGEMENT	§	
COMPANY, and CHEVRON PHILLIPS	§	
CHEMICAL COMPANY, LP	§	
	§	
Defendants.	§	
	§	

COMPLAINT

The United States of America (“United States”), by the authority of the Attorney General of the United States, acting at the request of the United States Department of the Interior, acting through the United States Fish and Wildlife Service (“DOI/FWS”), and the National Oceanic and Atmospheric Administration (“NOAA”) of the United States Department of Commerce; and the State of Texas (“State”), by and through its Attorney General, on behalf of the people of the State of Texas and the Texas Commission on Environmental Quality (“TCEQ”), the Texas General Land Office (“GLO”), and the Texas Parks and Wildlife Department (“TPWD”) (collectively, the “Trustees”), file this Complaint and allege as follows:

I. NATURE OF THE ACTION

1. This is a civil action brought by the United States and the State, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607; Section 311 of the Clean Water Act (“CWA”), 33 U.S.C.

§ 1321; and Section 1002(b)(2)(A) of the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2702(b)(2)(A), to recover damages for injury to, destruction of, or loss of natural resources, including lost ecological services, resulting from releases and the threat of releases of hazardous substances and the discharges and the threat of discharges of hazardous substances and oil at and/or from the Chevron Port Arthur Refinery (“the Refinery”) and adjacent areas to the Refinery in Port Arthur, Jefferson County, Texas, including the unreimbursed reasonable costs of assessing such damages incurred by the Trustees.

2. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and 28 U.S.C. § 2201, the United States and the State also seek a declaratory judgment that the Defendants are liable for any further natural resource damages incurred by the United States and the State.

3. Pursuant to the Texas Oil Spill Prevention and Response Act (“OSPRA”), Tex. Nat. Res. Code Ann., §§ 40.107(c)(7)(F) and 40.203(b), the State seeks natural resource damages resulting from discharges and the threat of discharges of oil at and/or from the Refinery.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345; Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b); Section 311(e)(2) of the CWA, 42 U.S.C. § 1321(e)(2); and Section 1017(b) of OPA, 33 U.S.C. § 2717(b). This Court also has supplemental jurisdiction over state law claims in this action under 28 U.S.C. § 1367.

5. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. § 1391(b); Section 113(b) of CERCLA, 42 U.S.C. § 9613(b); and Section 1017(b) of OPA, 33 U.S.C. § 2717(b), inasmuch as it is the judicial district in which the Defendants may be found, it is the judicial district in which a release and threat of release of hazardous substances and a discharge

and threat of discharge of hazardous substances and/or oil have occurred, and it is the judicial district in which property affected by the release and the discharge is located.

III. PLAINTIFFS

6. Plaintiff, the United States of America, has commenced this action on behalf of NOAA and DOI/FWS, the federal agencies that have been designated by the President to act on behalf of the public as trustees for natural resources belonging to, managed by, controlled by, or appertaining to the United States.

7. Plaintiff, the State of Texas, commenced this action on behalf of TCEQ, GLO, and TPWD, the state agencies that have been designated by the Governor of the State to act on behalf of the public as trustees for natural resources belonging to, managed by, controlled by, or appertaining to the State.

IV. DEFENDANTS

8. Defendant Chevron U.S.A. Inc. (formerly known as Gulf Oil Corporation) is a Pennsylvania corporation which is registered to conduct business in the State of Texas. Chevron U.S.A. Inc. owned and operated the Refinery from approximately 1902 until 1995, when it sold the Refinery to Clark Refining & Marketing, Inc. (now Premcor Refining Group LP). Chevron U.S.A. Inc. subsequently entered into a 99-year leaseback agreement with Clark for portions of the Refinery, and it subleased a portion of the leaseback property to Chevron Chemical Company.

9. Chevron Environmental Management Company is a California corporation which is registered to conduct business in the State of Texas. Since 1996, Chevron Environmental Management Company has conducted the investigation and remediation activities at the Refinery on behalf of Chevron U.S.A. Inc.

10. Chevron Phillips Chemical Company, LP (a successor-in-interest to Chevron Chemical Company) is a Delaware limited partnership which is registered to conduct business in the State of Texas. Since July 2000, Chevron Phillips Chemical Company, LP has owned and operated the petrochemical chemical complex on the leaseback portion of the Refinery.

V. STATUTORY AUTHORITY

11. Section 107(a) of CERCLA provides in pertinent part as follows:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in section (b) of this section -

(1) the owner and operator of a vessel or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

* * *

(4) . . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for -

* * *

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release;

42 U.S.C. § 9607(a).

12. Section 1002 of OPA provides in pertinent part as follows:

(a) In general

Notwithstanding any other provision or rule of law, and subject to the provision of this Act, each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines

or the exclusive economic zone is liable for removal costs and damages specified in subsection (b) that result from such incident.

* * *

(b) Covered removal costs and damages

* * *

(2)(A) Natural resources

Damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by a United States trustee, a State trustee, an Indian tribe trustee, or a foreign trustee.

33 U.S.C. § 2702.

13. Section 311 of the CWA provides in pertinent part as follows:

(b)(3) . . . The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States [or] adjoining shorelines . . . or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States . . . in such quantities as may be harmful . . . is prohibited

(f)(2) . . . [An] owner or operator of any such [onshore] facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government

(4) The costs of removal of oil or a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under subsection (f) of this section shall include any costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance in violation of subsection (b) of this section.

33 U.S.C. § 1321(b)(3), (f)(2), and (f)(4).

14. OSPRA, Tex. Nat. Res. Code Ann. provides in pertinent part as follows:

“[P]ersons responsible for actual or threatened unauthorized discharge of oil are liable for natural resource damages attributable to the discharge.”

Tex. Nat. Res. Code Ann. § 40.203.

VI. GENERAL ALLEGATIONS

15. The Port Arthur Refinery (the “Refinery”), which encompasses approximately 4,000 acres, is located at 1801 South Gulfway Drive in Port Arthur, Jefferson County, Texas. A refinery has continuously operated at this location since the early 1900s.

16. The Refinery is a “facility,” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and Section 1001(9) of OPA, 33 U.S.C. § 2701(9); it is an “onshore facility,” as defined by Section 311(a)(10) of the CWA, 33 U.S.C. 1321(10); and it is a “facility” or “terminal facility,” as defined in OSPRA, Tex. Nat. Res. Code Ann § 40.003(23).

17. The Trustees, TCEQ, and others conducted investigations, and they detected “hazardous substances,” as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and Section 311(a)(14) of the CWA, 33 U.S.C. § 1321(a)(14), in the soil, surface water, sediments, and groundwater at the Refinery and adjacent areas. These hazardous substances include, but are not limited to, polycyclic aromatic hydrocarbons (“PAHs”) consisting of 2-methylnaphthalene, acenaphthene, acenaphthylene, anthracene, benzo(a)anthracene, benzo(a)pyrene, chrysene, dibenz(a,h)anthracene, fluoranthene, fluorene, naphthalene, phenanthrene, and pyrene; lead; chromium; and other metals.

18. The Trustees, TCEQ, and others conducted investigations, and they detected “oil,” as defined in Section 1001(23) of OPA, 33 U.S.C. § 2701(23); Section 311(a)(1) of the CWA,

33 U.S.C. § 1321(a)(1); and OSPRA, Tex. Nat. Res. Code Ann. § 40.003(17), in the soil, surface water, sediments, and groundwater at the Refinery and adjacent areas.

19. Hazardous substances were released into the environment from the Refinery and hazardous substances and oil were discharged at the Refinery, adjacent areas, navigable waters and/or adjoining shorelines through direct discharge, surface water runoff, groundwater, and seeps.

20. The release of hazardous substances and the discharge of hazardous substances and oil caused and continues to cause injury to, destruction of, and loss of natural resources, as defined by 101(16) of CERCLA, 42 U.S.C. § 9601(16), and Section 1001(20), 33 U.S.C. § 2701(20). Each of the Trustees and the public suffered and continue to suffer the loss of natural resource services (including ecological services) as a consequence of the injuries to the natural resources.

21. Pursuant to Section 107(f) of CERCLA, 42 U.S.C. § 9607(f); Section 311 of the CWA, 33 U.S.C. § 1321; 43 C.F.R. Part 11; the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.*; and implementing regulations at 40 C.F.R. Part 1500, the Trustees conducted a natural resource damage assessment ("NRDA") of the Refinery and adjacent areas. The NRDA described the injury, loss, or destruction of natural resources and resource services due to releases of hazardous substances from the Refinery, the discharges of hazardous substances and oil at the Refinery and adjacent areas, the response actions conducted at the Refinery, and the response actions expected to be implemented at the Refinery. Chevron participated in the NRDA process for the Site pursuant to 43 C.F.R. § 11.32(a)(2)(iii).

22. The Trustees evaluated the effect of the releases of hazardous substances and the discharges of hazardous substances and oil on natural resources at the Refinery and adjacent areas including but not limited to, the open water, sediments, wetlands, and terrestrial habitats, birds, terrestrial receptors, and benthic aquatic invertebrates.

23. The Trustees determined that natural resources, including, but not limited to, fish, shellfish, invertebrates, birds, and benthos were and continue to be injured, destroyed, or lost as a result of the release of hazardous substances and the discharges of hazardous substances and oil from the Refinery.

24. The assessment of injuries to natural resources, including interim ecological service losses, and the restoration plan developed to compensate for those losses are identified in the Final Restoration Plan and Environmental Assessment for the Old Gulf Oil Refinery, Port Arthur, Jefferson County, Texas ("Final RP/EA"), dated September 10, 2004.

25. In the Final RP/EA, the Trustees concluded that the following ecological projects should be implemented to compensate for the ecological resource injuries and service losses that were identified in the Final RP/EA: 1) the Jefferson County ("J.C.") Wetlands Restoration Project, 2) the Old River South ("ORS") Water Control Structures Restoration Project, and 3) the ORS Marsh Complex and Wet Prairie Restoration Project.

26. The Trustees incurred and will continue to incur costs in assessing the damages to natural resources at the Refinery and adjacent areas.

FIRST CLAIM FOR RELIEF
NATURAL RESOURCE DAMAGES UNDER SECTION 107 OF CERCLA

27. Plaintiffs reallege paragraphs 1 through 11 and 15 through 26.

28. Defendants Chevron U.S.A. Inc. and Chevron Phillips Chemical Company, LP owned and they continue to own a facility from which there have been releases and there continues to be a threat of a release of hazardous substances into the environment within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

29. Each Defendant operated and Defendants Chevron Environmental Management Company and Chevron Phillips Chemical Company, LP continue to operate a facility from which there have been releases and there continues to be a threat of a release of hazardous substances into the environment within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

30. The releases and the threat of releases of hazardous substances into the environment from a facility owned and/or operated by each Defendant has caused and continues to cause injury to, destruction of, and loss of natural resources, within the meaning of Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C).

31. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), each Defendant is jointly and severally liable to Plaintiffs for damages for injury to, destruction of, and loss of natural resources caused by releases and the threat of releases of hazardous substances from the Refinery into the environment, including the loss of use of such resources; costs of restoration, replacement, or acquisition of equivalent resources; and Plaintiffs' costs of assessing such injury and damage.

32. Pursuant to Section 113(g) of CERCLA, 42 U.S.C. 9613(g), each Defendant is jointly and severally liable to the United States and the State in any subsequent action or actions to recover further damages.

SECOND CLAIM FOR RELIEF
NATURAL RESOURCE DAMAGES UNDER OPA

33. Plaintiffs reallege paragraphs 1 through 10, 12, and 15 through 26.

34. Defendants Chevron U.S.A. Inc. and Chevron Phillips Chemical Company, LP owned and they continue to own a facility from which there has been a discharge and there continues to be a threat of a discharge of oil into or upon navigable waters and/or adjoining shorelines within the meaning of Sections 1001 and 1002 of OPA, 33 U.S.C. §§ 2701 and 2702.

35. Each Defendant operated and Defendants Chevron Environmental Management Company and Chevron Phillips Chemical Company, LP continue to operate a facility from which there has been a discharge and there continues to be a threat of a discharge of oil into or upon navigable waters and/or adjoining shorelines within the meaning of Sections 1001 and 1002 of OPA, 33 U.S.C. §§ 2701 and 2702.

36. Pursuant to Section 1002 of OPA, 33 U.S.C. § 2702, each Defendant is jointly and severally liable to Plaintiffs for damages for injury to, destruction of, loss of, and loss of use of natural resources caused by a discharge and the threat of a discharge of oil into navigable waters and adjoining shorelines at the Refinery and adjacent areas, including loss of use of such resources; costs of restoration, replacement, or acquisition of equivalent resources; and Plaintiffs' costs of assessing such injury and damage.

THIRD CLAIM FOR RELIEF
NATURAL RESOURCE DAMAGES UNDER THE CWA

37. Plaintiffs reallege paragraphs 1 through 10, 13, and 15 through 26.

38. Defendants Chevron U.S.A. Inc. and Chevron Phillips Chemical Company, LP owned and they continue to own an onshore facility from which there has been a discharge and

there continues to be a threat of a discharge of oil and/or hazardous substances into or upon navigable waters and/or adjoining shorelines within the meaning of Section 311 of the CWA, 33 U.S.C. § 1321.

39. Each Defendant operated and Defendants Chevron Environmental Management Company and Chevron Phillips Chemical Company, LP continue to operate an onshore facility from which there has been a discharge and there continues to be a threat of a discharge of oil and/or hazardous substances into or upon navigable waters and/or adjoining shorelines within the meaning of Section 311 of the CWA, 33 U.S.C. § 1321.

40. Pursuant to Section 311(f) of the CWA, 33 U.S.C. § 1321(f), each Defendant is jointly and severally liable to Plaintiffs for damages and destruction of natural resources caused by a discharge and the threat of a discharge of oil and/or hazardous substances into navigable waters and adjoining shorelines at the Refinery, including loss of use of such resources; costs of restoration, replacement, or acquisition of equivalent resources; and Plaintiffs' costs of assessing such injury and damage.

FOURTH CLAIM FOR RELIEF
NATURAL RESOURCE DAMAGES UNDER OSPRA

41. Plaintiff State of Texas through the GLO separately realleges paragraphs 1 through 10, 14, and 15 through 26.

42. Defendants Chevron U.S.A. Inc. and Chevron Phillips Chemical Company, LP are owners or operators of a facility from which there has been a discharge and there continues to be a threat of a discharge of oil into the environment within the meaning of OSPRA, Tex. Nat. Res. Code Ann. § 40.003. Defendants Chevron U.S.A. Inc. and Chevron Phillips Chemical

Company, LP are persons responsible for an unauthorized discharge of oil within the meaning of OSPRA, Tex. Nat. Res. Code Ann. § 40.003.

43. Defendants Chevron Environmental Management Company and Chevron Phillips Chemical Company, LP continue to operate a facility from which there has been a discharge and there continues to be a threat of a discharge of oil into the environment within the meaning of OSPRA, Tex. Nat. Res. Code Ann. § 40.003. Defendants Chevron Environmental Management Company and Chevron Phillips Chemical Company, LP are persons responsible for an unauthorized discharge of oil within the meaning of OSPRA, Tex. Nat. Res. Code Ann. § 40.003.

44. The natural resources that were and continue to be injured, destroyed, or lost as a result of the discharge of oil from Defendants' facilities include fish, shellfish, invertebrates, birds, benthos, and other such "natural resources" as that term is defined in Tex. Nat. Res. Code Ann. § 40.003(16).

45. The State of Texas through the GLO has incurred and continues to incur costs related to the assessment of injury to natural resources from the discharge of oil from Defendants' facilities.

46. Pursuant to OSPRA, Tex. Nat. Res. Code Ann. §§ 40.202(b) and 40.203, Defendants are jointly and severally liable to the State of Texas for natural resource damages caused by the discharge and the threat of a discharge of oil into the environment from the Refinery, including loss of use of such resources and costs of restoration, rehabilitation, or replacement of equivalent resources, resulting from the discharge oil from Defendants' facilities, and for the State of Texas' costs of assessing such injury and damage.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court enter judgment against Defendants and:

(1) Order Defendants to pay to Plaintiffs damages for the injury to, destruction of, and loss of natural resources, within the trusteeship of the United States and State of Texas, caused by releases and the threat of releases of hazardous substances and discharges and the threat of discharges of hazardous substances and oil into the environment at the Refinery and adjacent areas;

(2) Order Defendants to reimburse Plaintiffs for costs they have incurred in their assessment of the injury to natural resources and damages for such injury caused by releases and the threat of releases of hazardous substances and discharges and the threat of discharges of hazardous substances and oil into the environment at the Refinery and adjacent areas; and

(3) Award Plaintiffs such other and further relief as this Court may deem appropriate.

Respectfully submitted,

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